

## STATUTES AND GUIDELINES

0622

(November 1996)

This section discusses statutes and recent court decisions about news media access to criminal justice information and facilities, crime scenes, and disaster areas.

The department wants to create an open and honest communication policy with the public and the media. The public has a right to know what public agencies are doing, and the press has the highest constitutional protections while reporting this information.

Department personnel must accept that they will always be under close public scrutiny and prepare to receive questions from the news media. The decision to release information should not be based upon laws or court decisions but the simple question: "Why shouldn't I release this?" (Remember, however, that you must first be authorized to release information).

This section also provides guidelines when the release of information could be harmful or illegal. For example, arrested suspects have a constitutional guarantee to a fair and unprejudiced trial, so investigations, crime scenes, and individual criminal information are protected from release.

## DEFINITION OF THE NEWS MEDIA

0622.1

(November 1996)

The Supreme Court refuses to define reporter or newsperson. In Branzburg v. Hayes, the Court reasoned "the administration of a constitutional newsman's privilege would present practical and conceptual difficulties of a high order" in part because of the difficulties in drafting a definition of the newsperson.

In Quad-City Community News Service, Inc. v. Jabens (344 F. Supp. 8 [S.D. Iowa 1971]), criminal justice officials denied an underground newspaper access to police department records because it was not a "legitimate" or "established" paper. The Court found the officials had violated the equal protection clause of the Fourteenth Amendment; they could not justify refusing access to one newspaper while allowing access to another.

Based on these examples, the Supreme Court apparently defines a reporter as any member of the public claiming to be a news media representative. However, in Los Angeles Free Press, Inc. v. City of Los Angeles (9 C.A. 2d 448 [1970]), the court held that law enforcement agencies, by issuing press identification cards, may determine which members of the media are to be allowed access to crime or disaster scenes.

The Court viewed granting priority to members of the press who regularly report police and fire news as a reasonable classification under the equal protection clause of the Fourteenth Amendment.

CAL FIRE does not issue press cards to newsgathering personnel employed by media of general interest coverage or circulation.

## **RELEASE OF CRIMINAL HISTORY INFORMATION**

**0622.2**

(November 1996)

The California Penal Code forbids the release of state or local criminal history information to unauthorized persons, including the news media (PC 13302). Information becomes history once the case is adjudicated, all appeals are exhausted, and the matter is no longer before a legal forum.

Mug shots and other photographs from previous investigations are considered criminal history and cannot be released to the news media for publicity purposes. Officials who do release these photographs are committing a misdemeanor, since the court considers this action an invasion of privacy and, subsequently, a civil rights violation. Release of these photographs could subject the official and the department to the payment of civil damages, actual and punitive.

However, there are exceptions to these rules. Section 13305(b) of the Penal Code states: "It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in the connection with the commission of a crime." The courts have held it is acceptable to release a photograph if it is "within the scope of an investigation."

## **RELEASE OF JUVENILE OFFENDER INFORMATION**

**0622.3**

(November 1996)

A crime committed by a juvenile is just as newsworthy as if committed by an adult. News media requests should be fulfilled as in any other incident by releasing facts as to what, where, how, when, but not whom.

The who is the only difference in the release of information pertaining to juveniles. As a result of *T.N.G. v. Superior Court of San Francisco* (4 C 3d, 767 [May 6, 1971]), the California Supreme Court ruled that police records identifying a juvenile suspect detained or arrested cannot be released to a third party. The third party, of course, includes the news media.

The fact that a crime was committed by a juvenile is releasable.

Information personnel must also exercise care in situations where a juvenile is an accident victim and is also arrested, because identifying and personal information is not releasable.

## **PUBLIC DISCLOSURE OF CRIME AND ARREST REPORTS**

**0622.4**

(November 1996)

The California Government Code and the Public Records Act establish the right of the public and news media to obtain information considered public record. Government Code Section 6254(f) was amended to require that effective March 1, 1982, the following shall be provided upon request:

"Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

"The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds; and

"The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent such information regarding crimes alleged or committed or any other incident investigated is recorded, the time, the date and location of occurrence, the time and date of the report, the name, age and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 286, 288, 288a, or 289 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved."

## **AMERICAN BAR ASSOCIATION STANDARDS**

**0622.5**

(November 1996)

Most news media inquiries seek incident information, arrest details, or investigation information. The department will cooperate by providing such information, but it is also the department's responsibility to insure that information released will not infringe upon a defendant's right to a fair trial.

During the last several decades, pre-trial publicity has become a controversial issue. To inform the public while protecting the defendant against prejudicial pre-trial publicity, CAL FIRE uses the American Bar Association standards regarding pre-trial publicity.

**Releasable Information:**

- Facts and circumstances of the arrest
  - Time and place
  - Resistance put up by the suspect
  - Pursuit necessary to apprehend the suspect
  - Use of weapons by officer or suspect
- Identification of arresting and investigating officers and length of investigation
- Limited description of evidence seized
  - For example, a matchbook from Speedy Mart
  - Do not make any reference to confessions, admissions, statements.
- Nature, substance, text of charge:
  - A brief description of the offense charged
  - Blood alcohol results when known
- Information personnel may quote from or refer to public records of the court without any personal comment
- Schedule or result of any stage of the judicial process
- Any request for assistance from the public

**Non-releasable Information:**

- Prior to arrest do not release the arrested suspect's identity.
- Prior to arrest do not release the results of investigative procedures.  
  
(Note: Information personnel may release the above items if it will aid in the investigation, assist in the apprehension of the suspect, or warn the public of danger.)
- Prior criminal record, reputation, or character (but in the case of an adult, you may release name, age, residence, occupation, and family status).

- Identity or any personal information of a juvenile suspect.
- Existence or contents of any confession or statement given by a suspect or the refusal to make a statement.
- An opinion about the possibility of a guilty plea to lesser charges or other disposition.
- Any photographs or mug shots (unless release will aid in the investigation, assist in the apprehension of the suspect, or warn the public of danger).
- The identity, testimony, or credibility of prospective witnesses.
- Any personal opinion as to the suspect's guilt, innocence, or merits of the case.
- Any information which would be inadmissible in court.
- Information personnel may not move or pose subjects or evidence solely for the purpose of allowing photographs and news film to be taken. (However, information personnel may not prevent photographers from taking unposed pictures in public places.)
- References to investigative procedures such as fingerprints, polygraph tests, or ballistics tests.
- Information personnel may not describe or allow photographs of incendiary devices.

## **MEDIA ACCESS** (November 1996)

**0622.6**

The United States Supreme Court has consistently held that the news media have no greater right to information than the general public. The following sections describe the media's rights of access to various kinds of information.

## **MEDIA ACCESS TO CRIMINAL JUSTICE INFORMATION** (November 1996)

**0622.6.1**

Although most law enforcement agencies grant greater access to criminal justice information to the news media than to the public, the Supreme Court has maintained that a reporter has no greater legal right to criminal justice information than the public-at-large.

In *Branzburg v. Hayes* (408 U.S. 665, 684 [1972]), the Court held that the First Amendment does not guarantee the press special access to information not available to the public generally.

In Pell v. Procunier (417 U.S. 817, 843-5 [1974]), the Court guaranteed journalists constitutional section for confidentiality of sources but did not require the government to make information available to journalists that is not available to the public.

## **MEDIA ACCESS TO CRIME SCENES AND DISASTER AREAS 0622.6.2** (November 1996)

The Supreme Court has ruled that the news media has no greater legal right of access to crime and disaster scenes than does the general public.

In Branzburg v. Hayes (408 U.S. 665, 684-5 [1975]), the Court excluded the press from grand jury proceedings, the Supreme Court's own conferences, the meetings of other official bodies, and the meetings of private organizations. The Court also stated "Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal (emphasis added)."

The California Penal Code Section 409.5(d) allows media access to scenes of disaster, riot, or civil disturbance but not to crime scenes. However, this statement does not imply that the news media can interfere with incident operations (see Public Records Act). Properly identified members of the news media should not be restricted from entering locations specified in Section 409.5 of the Penal Code. If entering such a location is hazardous, they should be advised; media access cannot be prevented for safety reasons unless their presence would impede CAL FIRE by blocking the entrances and exits or disturbing evidence.

## **MEDIA ACCESS TO PENAL FACILITIES 0622.6.3** (November 1996)

The Supreme Court has consistently held that the news media does not have a constitutional right of access to prisons and other criminal justice facilities, including conservation camps.

In Pell v. Procunier (417 U.S. 817 [1974]), the Court declared that the media has "no constitutional right of access to prisons or their inmates beyond that afforded the general public." On this basis, the Court sustained prison regulations that prevented media interviews with inmates.

In Houchins v. Koed, Inc. (98 S.Ct. 2588, 2595 [1978]), the Court held that the First and Fourth Amendment do not guarantee the news media right of access to government information or sources of information not available to the public. Jail officials were proper in denying media representatives access to jail facilities to interview inmates, make sound recordings, films, and to take photographs.

## NEWS MEDIA RIGHT TO PUBLISH

0622.7

(November 1996)

The news media can access and publish information already in the public domain.

In Cox Broadcasting Corporation v. Cohn (420 U.S. 469 [1975]), the Court struck down a Georgia statute that prohibited publishing a rape victim's name because in this instance the name was in the court's public record. The Court ruled that, "By placing the information in the public domain of official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the State may not impose sanctions on the publication of truthful information contained in official court records open to public inspection."

Although the media's First Amendment right to obtain government held criminal justice data is uncertain, there is little uncertainty about the media's First Amendment right to publish such data once it has fallen into their hands. The First Amendment clearly prohibits the government from acting to limit the media's dissemination of criminal justice records information. In numerous recent opinions, the Supreme Court has restated the prevailing constitutional view that the press has a right to publish any information it obtains without government restraints, except in the most limited and extreme circumstances, Nebraska Press Ass'n. v. Stuart (427 U.S. 539 [1976]). In narrow circumstances the government can act to restrain publication of information, Near v. Minnesota (283 U.S. 697 [1931]). Prior restraint was also permitted most recently in a much heralded federal district court decision rejecting a magazine's right to publish technical information about the construction of a hydrogen bomb, United States v. Progressive, Inc. (No. 79-C-98 [W.D. Wisc. March 26, 1979]).

[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)